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IN THE

Supreme Court of the United States

October Term, 1977

WALTER J. FLECK, *et al.*,

Appellants,

vs.

WARREN SPANNAUS, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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Appellees move this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the three-judge federal district court for the District of Minnesota on the following grounds:

1. The decision of the district court is clearly correct under the principles recently enunciated by this Court in *United States Trust Co. v. New Jersey*, —— U.S. ——, 97 S. Ct. 1505 (1977) and the leading case of *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934).

2. There is no conflict of decision.

3. The question on which the decision of the cause rests is so unsubstantial as not to need further argument.

STATUTE INVOLVED

The Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1976), is set forth in full at Appendix B to the Jurisdictional Statement of Appellants and is described in the district court's unreported opinion, which is contained in Appendix A to the Jurisdictional Statement.

QUESTION PRESENTED

Was the lower court correct in holding that the Minnesota Private Pension Benefits Protection Act, as it applies to the salaried employees pension plan of the Allied Steel Company, is valid under the Contract Clause of the United States Constitution?

STATEMENT

For many years Allied Structural Steel Company ("Allied Steel") maintained a Minnesota office which monitored the construction of steel buildings and bridges in 30 states.[1] *Fleck v. Spannaus*, 412 F. Supp. 366 (D. Minn. 1976). In December 1974, Allied Steel commenced the instant action against appellees, Warren Spannaus, the Attorney General of the State of Minnesota, and other Minnesota state officials[2] charged with enforcing the Minnesota Private Pension Benefits Protection Act ("Minnesota Pension Act"), Minn. Stat. ch. 181B (1976).

[1] By its Order of August 5, 1976, the three-judge federal district court herein ruled that all three individual plaintiffs (Fleck, Hamler and Richert) lacked standing to challenge the constitutionality of the Minnesota Pension Act and, therefore, dismissed them from the lawsuit. Consequently, Allied Steel now is the only real party in interest as appellant. It does not raise the validity of that dismissal before this Court.

[2] Appellees will be referred to as the State of Minnesota hereinafter.

Allied Steel sought summary judgment from a three-judge federal district court declaring that the Minnesota Pension Act was invalid under various state law theories and on constitutional grounds. Before issuing its decision on the constitutional issues, the three-judge court certified questions of state law[3] to the Minnesota Supreme Court and appointed a special master to make certain findings of fact.[4] The Minnesota Supreme Court subsequently ruled that the Minnesota Pension Act was applicable to Allied Steel. *Fleck v. Spannaus*, —— Minn. ——, 251 N.W.2d 334 (1977).

On April 7, 1977, the Special Master submitted his Findings of Fact to the lower court.[5] He found that as of June 30, 1974, Allied Steel's salaried employees pension plan had a net deficiency under its own terms of $295,341. He also concluded that there had been no earmarking of contributions to the pension fund for specific employees and that the possibility of closure of its Minnesota office was not one of the actuarial assumptions which had been used in developing Allied Steel's pension plan.[6]

Subsequently the district court held on September 2, 1977, that the Minnesota Pension Act was constitutional under the Contract and Commerce Clauses of the United States Constitution and under the Due Process and Equal Protection Clauses of the Constitution's Fourteenth Amendment.[7] In seeking to appeal that decision, Allied Steel now asserts as the sole basis for its appeal that the Minnesota Pension Act violates the Contract Clause, U. S. Const. art. I, § 10, cl. 1.

[3] *See* Minn. Stat. § 181B.17 (1976).

[4] *See* lower court opinion contained in Jurisdictional Statement at Appendix (hereinafter abbreviated as "App.") 1a-2a.

[5] All parties have stipulated to the Findings of Fact pursuant to Rule 53(e)(4) of the Federal Rules of Civil Procedure.

[6] Special Master's Findings of Fact at 3-7; *see also* App. at 5a-7a.

[7] App. at 13a-19a.

The Minnesota Pension Act was enacted on April 9, 1974. It protects accrued pension benefits of any Minnesota "employee" with ten or more years of employment by an employer maintaining a "place of employment" within Minnesota.[8] This protection is provided by requiring a Minnesota employer who terminates a Minnesota place of employment or pension plan to pay a pension funding charge if such action results in the forefeiture of pension benefits. The pension funding charge, which is fundamentally an amount equal to benefits that the employees accrued under the pension plan, is paid by the employer's purchase of prepaid, deferred annuities payable to the protected Minnesota employees upon retirement age as set forth in the pension plan or to the employees' beneficiaries upon the employees' death. Minn. Stat. § 181B.12 (1976).[9]

The Allied Steel Salaried Employees' Pension Plan was established on August 7, 1963, and has been in existence continuously since that date. The plan is for the benefit of salaried employees, none of whom are unionized. It has been qualified as a single-employer plan under the Internal Revenue Code § 401.[10]

Under the pension plan, a salaried employee is entitled to full vesting of his pension for early retirement purposes if: (1) he has worked fifteen continuous years and has attained the age of 60; or (2) after he has attained the age of 55 and has worked 20 continuous years, or a lesser number

[8] For definitions of the relevant terms used in the Minnesota Pension Act, see Minn. Stat. § 181B.02 (1976).

[9] The Minnesota Pension Act has been preempted by ERISA, 29 U.S.C. § 1144(a); however, the preemption did not take effect until January 1, 1975, and does not apply to any cause of action accruing prior to that date. Fleck v. Spannaus, 412 F. Supp. 366 (D. Minn. 1976); Fleck v. Spannaus, —— Minn. ——, 251 N.W.2d 354 (1977).

[10] Fleck v. Spannaus, 412 F. Supp. 366, 368 (D. Minn. 1976).

of continuous years of service, which when added to his age equals the sum of 75; or (3) before reaching age 55, he has at least 25 or more years of continuous service such that the sum of his age and continuous years of service equal 80.

On July 31, 1974, Allied Steel ceased operations in Minnesota and eleven employees at the division were terminated.[11] At least nine of these employees had been employed by Allied Steel for more than ten years prior to their termination but had not reached retirement age under the Pension Plan. Since mandatory ten-year vesting under ERISA[12] was not effective until January 1, 1976, the nine Minnesota employees do not receive any accrued benefits under the Pension Plan or through federal insurance under ERISA. The only protection of accrued pension benefits available to the Minnesota employees is that protection provided by the Minnesota Pension Act. *See Fleck v. Spannaus*, —— Minn. ——, 251 N.W.2d 334, 338-39 (1977).

In September 1974, pursuant to the Minnesota Pension Act, Allied Steel notified the Minnesota Commissioner of Labor and Industry of its intention to cease the operation of its place of employment in Minnesota. Thereafter, when it became apparent that the State of Minnesota intended to enforce the Minnesota Pension Act and the funding charge thereunder against Allied Steel,[13] the company commenced an action for declaratory and injunctive relief. That action has led to Allied Steel's appeal to this Court.

[11] This termination was begun subsequent to the effective date of the Minnesota Pension Act.

[12] ERISA is the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.

[13] On August 18, 1975, the State of Minnesota notified Allied Steel of the assessment of a pension funding charge of $185,751. At Allied Steel's request, an administrative hearing was granted to determine the accuracy of the funding charge. This hearing has been held in abeyance pending the outcome of the litigation.

ARGUMENT

THE LOWER COURT'S DECISION IS CORRECT UNDER THE PRINCIPLES OF UNITED STATES TRUST CO. v. NEW JERSEY AND PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT.

Allied Steel presses only one claim as a basis for seeking appeal to this Court. It alleges that the Minnesota Pension Act is invalid under the Contract Clause, U.S. Const. art. I, § 10, cl. 1. As noted by the lower court herein, the specific contracts claimed to be impaired by the Minnesota Pension Act are:

> . . . (1) [T]he employment agreements entered into by Allied and its employees, and (2) the trust agreement between Allied and the trustee of its pension plan. The terms of the employment agreements included wage rates, working conditions and fringe benefits, one of which was a pension plan with vesting to occur after twenty years. The Pension Act allegedly impairs those agreements in that it *requires vesting of pension benefits after ten years if Allied ceases to do business or substantially reduces its work force in Minnesota. The terms of the trust agreement* require payment by Allied in accord with actuarial projections which *are predicated on vesting after twenty years.* The Pension Act allegedly impairs that agreement because Allied must incur additional expense to provide benefits for persons whose benefits would be forfeited by plant closure.

(App. at 8a-9a, emphasis added.)

Allied Steel contends that the Minnesota Pension Act is invalid because it holds Allied liable for accrued pension benefits prior to the time such benefits would vest under its private pension plan. Such liability, however, arises only if any employer: 1) ceases to operate a place of employment or private pension plan in Minnesota, and 2) if such cessation results in the loss of employee pension benefits which had been covered by the plan.

The Minnesota Pension Act, however, is in accord with the Contract Clause decisions of this Court since it is a legitimate exercise of Minnesota's police power to protect vital interests of its residents and is both reasonable and necessary to achieve that purpose.

I. The Lower Court Properly Interpreted And Applied This Court's Decision In United States Trust In Holding That The Minnesota Pension Act Did Not Unconstitutionally Impair Appellants' Private Contract Rights.

In sustaining the constitutionality of the Minnesota Pension Act, the three-judge district court relied heavily on this Court's recent decision in *United States Trust Co. v. State of New Jersey*, —— U.S. ——, 97 S.Ct. 1505 (1977).

United States Trust involved a 1962 statutory convenant between New York and New Jersey and certain bondholders which had expressly provided that none of the revenues or reserves which were security for Port Authority bonds would be used to finance certain rail transit expenditures without the bondholders' consent. A 1974 New Jersey repealer statute[14] allowed the states to apply revenues from the pre-

[14] New York had also passed a statute parallel to the 1974 New Jersey law.

existing bond securities to the construction of the previously prohibited transit facilities. This Court concluded that the impairment of the bondholders' rights under the 1962 covenant was unconstitutional under the Contract Clause.

In reaching that conclusion this Court expressly relied on its decisions in *El Paso v. Simmons*, 379 U.S. 497 (1965) and *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934), and the tests enunciated in those cases for resolving Contract Clause challenges. 97 S. Ct. at 1514. As developed hereinafter, those tests require a determination of whether there is an impairment of a contract obligation and, if so, whether such impairment is for a legitimate public purpose and is both reasonable and necessary. 97 S. Ct. at 1515, 1521-1523.

The lower court held that even though Allied Steel's obligations under its pension plan were impaired, that impairment was unsubstantial for Contract Clause purposes. This holding was based, in part, on the stipulated finding that Allied Steel is not burdened by an unanticipated liability. App. at 6a. Since the possibility of closure of the Minnesota plant was not a contingency considered in developing the pension plan, Allied Steel's claim that its contributions to the plan were carefully determined on certain actuarial assumptions was unfounded. The lower court concluded that:

> . . . [W]hile the [early] date of payment [of employee pensions] could not be anticipated, the likelihood of payment was, as was the need to accumulate a reserve for that purpose.[15]

Thus, the lower court properly held that, in light of the Minnesota Pension Act's clear public purpose of providing economic protection to the elderly and the concomitant benefit to the overall state welfare, the *extent* of the Minnesota Pension Act's effect on Allied Steel was not violative of the Contract Clause. App. at 8a.

[15] App. at 7a.

Furthermore, the lower court took note of this Court's position in *United States Trust* that the tests of a statute's necessity and reasonableness should be applied less stringently to ". . . general regulatory legislation impairing a range of private contracts" than to statutes impairing ". . . a particular contract to which the state was a party." App. at 3a.

As the *United States Trust* Court observed:

> The states must possess broad power to adopt general regulatory measures without being concerned that *private contracts* will be impaired, or even destroyed, as a result. Otherwise, one would be able to obtain immunity from the state regulation by making private contractual arrangements.
>
> . . .
>
> Yet private contracts are not subject to unlimited modification under the police power. . . . As is customary in reviewing economic and social regulation, however, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.
>
> . . .
>
> As with laws impairing *private contracts*, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In applying this standard [to the instant case involving a *public contract*], however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate *because the State's self-interest is at stake.*

97 S. Ct. at 1517-20 (emphasis added and citations omitted).

The *United States Trust* Court, by analogy, compared the public and private contracts distinction to the "dual standard" this Court has applied under the Fifth Amendment in reviewing federal laws which retroactively abrogate the government's obligations under federal bonds to redeem the bonds at specified values. It observed that legislation interdicting private contracts would be viewed with less scrutiny than laws abolishing Congress' own contractual obligations, and that the extent of the limitations on the exercise of a state's reserved police powers to impair contracts depended upon the "nature of the contractual relationship." 97 S.Ct. at 1517-1520 and n. 25.

The public-versus-private contracts distinction in Contract Clause cases is rationally based on several key points. First, it is beyond dispute that all statutory impairments of contracts are not, *ipso facto*, unconstitutional, and this Court has made it clear that the judiciary must give great deference to the sovereignty of the states and their legislative enactments which impair contract obligations, so long as those impairments are reasonable and necessary to a legitimate public purpose. *See United States Trust Co. v. New Jersey, supra*, 97 S. Ct. at 1517; *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398, 434-435 (1934).

Second, it is logical to apply the reasonable-and-necessary test more strictly in a case where the contractual relationship is public in nature, *i.e.* where the state, as in *United States Trust* is one of the contracting parties. In such a circumstance it is likely that in enacting a statute which abrogates or impairs its own contracts[16] a state legislature might be motivated more by its own self interest than by the general public welfare. Conversely, states should be granted more deference and flexibility in passing statutes which incidentally impair a number of private contractual relationships when such statutes are reasonably directed to a problem of clear public importance.

Where a state law impairs purely private contract rights, it is more likely to be within the realm of legitimate police powers than a law which is arbitrarily directed at a specific public contract. *See Manigault v. Springs*, 199 U.S. 473 (1905); App. at 3a; Note, *The Constitutionality of the New York Municipal Wage Freeze and Debt Moratorium: Resurrection of the Contract Clause*, 125 U. Pa. L. Rev. 167, 187-196 (1976). As the lower court ruled herein, the standard test of reasonableness and necessity should be applied less strictly where private contracts are affected as opposed to cases involving public contracts. Thus, the lower court's holding that the Minnesota Pension Act does not unconstitutionally impair Allied Steel's contract rights as embodied in its salaried employees pension plan is unquestionably in full accord with this Court's decision in *United States Trust*.

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[16] One of the main reasons for the invalidation of the 1974 New Jersey law was this Court's belief that the mass transit problems to which the 1974 act was directed were clearly foreseeable by the New Jersey legislature prior to and at the time of the 1963 statutory covenant. 97 S.Ct. at 1509-1512, 1522-1523. It simply is not generally reasonable for a party (*i.e.*, a state) to a public contract to alter or abrogate unilaterally the terms of its own contract when the basis for such changes were known to or foreseeable by that party at the time of entering into the contractual relationship.

II. Even Without The Distinction Between The Impairment Of Public And Private Contracts, The Minnesota Pension Act Is Necessary And Reasonable And Serves A Vital Public Purpose.

It is apparent from the facts in the instant case that, regardless of any distinction between public and private contracts, the Minnesota Pension Act 1) is directed to an obvious and legitimate public purpose, 2) is reasonable and 3) is necessary. It is well settled that if a statute meets the foregoing three standards, it will be upheld as constitutional despite its effect on private or public contracts. *United States Trust, supra*; *Home Building & Loan Ass'n v. Blaisdell,* 290 U.S. 398 (1934).

A. The Act Is Directed To A Legitimate Public Purpose.

Allied Steel contends that the alleged uniqueness of the Minnesota Pension Act and its lack of legislative recitals regarding the public objectives of the statute somehow establish that the Act does not serve a public purpose.[17] That claim is without merit.

First, a statute's uniqueness *per se* certainly does not deprive it of a valid purpose. Rather, it may mean, as it does in the instant case, that the statute merely represents the first attempt by a particular legislative body to deal with a serious public problem. Allied Steel's theory of uniqueness would place the efficacy and legitimacy of many laws in jeopardy. *E.g.* Employee Retirement Income Security Act of 1974. 29 U.S.C. §§ 1001 *et seq.*[18]

[17] Jurisdictional Statement at 6.

[18] Indeed, ERISA is far more comprehensive in terms of its effects on private contracts than the Minnesota Pension Act. Thus, the Minnesota statute is not the unique law portrayed by Allied Steel.

Second, the hardships suffered by persons whose retirement plans have been shattered by inadequately funded private pension plans and broken pension promises have been so well publicized in recent years[19] that the lack of the Minnesota Pension Act's express recitals thereto is irrelevant. *See Home Building & Loan Ass'n v. Blaisdell,* 290 U.S. 398, 444 (1934). The statute on its face is directed to the protection of the economic welfare of senior citizens by assuring them the receipt of earned and expected pension benefits and, consequently, is within the broad police power of the state of Minnesota.[20] Indeed, the forfeiture of anticipated pensions because of inadequately funded plans is particularly devastating since it generally affects persons at an age when they frequently have no other source of income beyond Social Security and are normally too old or infirm to reenter the labor market. See district court opinion, App. at 10a n. 6. As a result, the loss of

[19] *See, e.g.*, the committee reports supporting the Congressional bills leading to the enactment of ERISA, S. Rep. No. 93-383, 93rd Sess. (1974), Pension Reform Act, *U. S. Code Cong. and Adm. News* 508, 516 (1974); Rep. No. 93-807, 93rd Cong., 2d Sess. (1974), Pension Reform Act, *U. S. Code Cong. and Admin. News* 288, 294 (1974); Hearings on Private Welfare and Pension Plans, Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess. 736, 783 (June 3, 1972).

[20] Allied Steel asserts that the Contract Clause is meaningless under the public purpose test, since a state "can always assert" an allegedly strong public purpose for any statute and, thus, easily overcome the provisions of private contracts. Appellants, however, misunderstand the application of the public purpose test. *See* Jurisdictional Statement at 6. First, the issue of whether a statute serves a *legitimate* public purpose must be reviewed on the facts of each case. Certainly, *every* legislative enactment is not directed to a broad public purpose sufficient to overcome a Contract Clause challenge. Second, as noted hereinabove, statutes must also be reasonable and necessary in their approaches to achieving a given public purpose. Thus, a finding of a valid public purpose is only one facet of a court's review of a challenged statute.

pension income can result in the inability to maintain adequate housing, clothing or nutrition.[21]

The state interest in assuring adequate income to the elderly has been recognized by this Court. *See Helvering v. Davis*, 301 U.S. 619 (1937); *see also Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937); *New York Central R.R. v. White*, 243 U.S. 188 (1917); *Mountain Timber Co. v. Washington*, 243 U.S. 219 (1917). The public purpose of the Minnesota Pension Act, in particular, has been noted by the Minnesota Supreme Court during another stage of the proceedings of the instant case. *Fleck v. Spannaus*, —— Minn. ——, 251 N.W. 2d 334, 336, 338-340.

B. The Necessity Of The Minnesota Pension Act Is Clear.

One means for determining the necessity of the Minnesota Pension Act is to measure it against alternative methods for achieving the same public purposes. *See United States Trust*, 97 S.Ct. at 1522.

In *United States Trust*, for example, this Court found the 1974 New Jersey repealer statute unnecessary, in part, because the statute's objectives, *i.e.* reducing automobile use and improving mass transit could be accomplished by other acceptable means such as imposing state taxes on vehicle miles traveled in the Port Authority area, increased commuter tolls and increased gasoline taxes. 97 S. Ct. at 1522.

As alternatives in the instant case, Allied Steel, citing ERISA, asserts 1) that the Minnesota statute should apply its pension vesting and entitlement requirements only prospectively and 2) permit companies to terminate their pension plans during a grace period before the statute becomes effective. Jurisdictional Statement at 11. But, as the lower court properly noted, these suggestions are not truly alternatives to the valid public purposes for which the Minnesota Pension Act was necessary:

> . . . [T]he Minnesota legislature rejected both of these alternatives because either would have been inconsistent with the Act's central purpose—to assure some measure of retirement income to those affected by present plan[t] closures and plan terminations. Although the legislature might have adopted a less drastic means to accomplish its purpose, the approach it chose is not unreasonable or arbitrary merely because it requires funding to commence from the date of enactment.

App. at 12a-13a.[22]

The necessity of the Minnesota Pension Act is substantially greater than the need for the statute at issue in *United States Trust*. There, this Court ruled that one reason for holding the statute in question unnecessary under Contract Clause analysis was that the law's *total repeal* of the prior statutory covenant was not essential to its objectives. 97 S.Ct. at 1522. The Minnesota Pension Act, however, constitutes a very limited step in dealing with the critical problems caused by inadequately funded pension plans, since it applies only to employers who terminate their places of employment or their pension plans and whose plans are inadequately funded. Thus,

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[21] Furthermore, the mass forfeiture of retirement benefits that the Minnesota Pension Act seeks to prevent can result in adverse consequences for the surrounding community through reduced purchasing power and an increased demand for welfare funds and related public services.

[22] Allied Steel's contention that ERISA affects vesting requirements only prospectively is incorrect. Three alternative vesting requirements are provided by ERISA, and each of them to some extent can have a retroactive effect on plans, like Allied Steel's, which are underfunded. *See* 29 U.S.C. §§ 1053(a)(2)(a), 1053(a)(2)(B) and 1053(a)(2)(C).

the act is designed to prevent the forfeiture of accrued pension benefits by a substantial number of employees. Surely the Minnesota Pension Act not only is far more necessary to its objectives than the statute reviewed in *United States Trust*, but also is the only effective method for achieving its demonstrable public purposes.

C. The Method For Achieving The Minnesota Pension Act's Purposes Is Reasonable.

Since only employees with ten or more years of credited service are covered by the Minnesota Pension Act, an employer subject to liability would already have received the primary benefits of a significant period of productive service from employees to whom benefits would be payable under the Act. The employer also would have enjoyed the tax benefits for contributions previously made to the pension plan. In preventing the forfeiture of anticipated pension benefits, the Minnesota Pension Act simply insures that the employee receives the deferred compensation he worked for and expected in this retirement years.[23]

A common formulation of the test of reasonableness was expressed by this Court in *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934):

[23] To the extent that the problems of inadequate private pensions were foreseeable, it is noted that the Minnesota Pension Act represents the first attempt by the Minnesota legislature to provide a meaningful response to those problems. Certainly, there is no evidence herein that the employees of Allied Steel had any expectation that they would not receive their full pensions. *See* Craig v. Bemis Company, 517 F.2d 677, 680 (5th Cir. 1975) and Inland Steel Co. v. N.L.R.B., 170 F.2d 247, 249-50 (7th Cir. 1948), *cert. denied in part* 336 U.S. 960 (1949), *aff'd on other grounds* 339 U.S. 382 (1950), where the courts found that both employers and employees regard pensions as deferred compensation, and each *expects* such promised future benefits to attract and keep employees.

> The question is not whether the legislative action affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and *the measures taken are reasonable and appropriate to that end.*

290 U.S. at 438 (emphasis added). Similarly, in *Stephenson v. Binford*, 287 U.S. 251, 272 (1932) this Court stated:

> The extent to which . . . they [statutory provisions] conduce to that end, the degree of their efficiency, the closeness of their relation to the end sought . . . are matters addressed to the judgment of the Legislature, ... *It is enough if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the* [statute's] *means and the end.*
>
> (Emphasis added.)

Under the foregoing tests, the lower court's finding that the Minnesota Pension Act was a reasonable exercise of the state's police power is well founded. The application of the Act arises only when pension benefits have been forfeited as a result of a private pension plan termination or the cessation of operation of a place of employment in Minnesota. Furthermore, it imposes liability on an employer only with respect to employees with 10 or more years of covered service and only to the extent the pension fund is inadequate to cover the benefits promised under the pension plan. *See* Minn. Stat. §§ 181B.02, subds. 6, 10, 11, 12 and 16 and 181B.03-.07 (1976).

Allied Steel's claim that the Minnesota Pension Act is unreasonable because it allegedly imposes actuarially unanticipated liability on the company is without merit. *See* Jurisdic-

tional Statement at 10-11. In essence, the company asserts that its contributions to the pension plan were actuarially determined based on the anticipation that only a limited number of participants would ever actually qualify for pension benefits because of the stringent vesting provisions of the Pension Plan. Such a theory is inapposite to plant shut-downs covered by the Minnesota Pension Act. The lower court's conclusions in this regard are well supported by the Special Master's Findings that Allied Steel's actuarial assumptions in planning its pension program were *not* based on the possibility of plant closure.[24] Indeed, the forfeiture of pension benefits resulting from the cessation of operations of a place of employment, such as are covered by the Minnesota Pension Act, may actually provide a windfall to the employer at the expense of the terminated employees. *See* lower court opinion, App. at 6a; *Lucas v. Seagrave Corp.*, 277 F.Supp. 338, 345 (D. Minn. 1967). Accordingly, imposing liability on the employer to prevent the forfeiture of those employees' benefits can hardly be said to be irrational or oppressive.

Moreover, it is reasonable to extend the protection afforded by the Minnesota Pension Act to previously-accrued benefits, because to apply its protection only to those benefits earned after its passage would have rendered the Act ineffectual until many years after enactment. To limit the application of the Minnesota Pension Act to benefits earned subsequent to enactment would mean that a 20 year employee whose employment was terminated due to a plant shutdown one year

[24] *See* App. at 5a-7a. The transcription of the lower court's opinion at App. 5a is in error. The actual opinion stated that: "In this regard, Allied contends that the impairment is substantial because the Pension Act burdens employers with pension obligations that were *not* actuarially anticipated." The emphasized word was omitted from the Appendix.

after the passage of the Minnesota Pension Act, would still forfeit nineteen years of accrued pension benefits, with the state law protecting only one year of benefits. It was not unreasonable for the legislature to choose a method of protection that avoided such a virtually total emasculation of the purpose of the Minnesota Pension Act.[25] Consequently, there is no merit to the contention that the application of the Minnesota Pension Act to benefits accrued prior to its passage is unreasonable.

[25] Congress chose a similar course in ERISA. For example, the minimum vesting standards apply with respect to years of service prior to enactment. 29 U.S.C.A. § 1053(b)(1) (1975). Similarly, ERISA termination insurance protects benefits accrued prior to passage, and even applies retroactively to some plan terminations that occurred prior to passage. 29 U.S.C.A. §§ 1322 and 1381(b)(2) (1975)

CONCLUSION

The lower court's holding that the Minnesota Pension Act is a necessary police power statute reasonably directed to the achievement of a legitimate public purpose is obviously correct under principles delineated by this Court. Furthermore, there is no conflict of decision and, thus, no substantial question not previously decided by this Court. Therefore, this Court should dismiss Allied Steel's appeal or, in the alternative, affirm the decision of the three-judge federal district court.

Respectfully submitted,

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